Supreme Court, U.S.
FILED
AUG 8 2001
CLERK

No. 01-169

IN THE

Supreme Court of the United States

ROBERTO JIMENEZ,

Petitioner,

v.

HIALEAH HOUSING AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the Court of Appeals' decision to affirm the district court's summary judgment on petitioner's age discrimination claim on the grounds that petitioner failed to present sufficient evidence to create a genuine issue of material fact as to pretext in conflict with the United States Supreme Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097 (2000), such that a compelling reason exists for this Court to exercise its discretion and issue a writ of certiorari to review this matter?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Roberto Jimenez ("Jimenez") and the Hialeah Housing Authority ("Authority"). Richard Fusaro, who was an appellant/plaintiff below, is represented by separate counsel and has filed a separate petition with the Court, to which a response has already been filed. Hugo Hernandez, an appellant/plaintiff in the proceedings below, has not participated in the filing of a petition for writ of certiorari. Maria M. Roca, an appellee/ defendant below, is also not a party to these proceedings. Jimenez's description of the Authority as a "political subdivision of the City of Hialeah, Florida" is incorrect. The Authority is an independent, quasi-governmental entity created pursuant to Chapter 421, Fla. Stat.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statement of Jurisdiction	1
Constitutional and Statutory Provisions at Issue	1
Concise Statement of the Case	1
Argument	2
The Eleventh Circuit's Decision Below Does Not Give Rise To A Conflict With This Court's Decision In *Reeves*.	2
A. The Eleventh Circuit's Decision Below Does Not Conflict With *Reeves*.	3
B. Even If The Proper Focus In This Petition Were On The District Court's Analysis, Rather Than On The Eleventh Circuit's, The Petition Should Still Be Denied Because The District Court's Analysis Was Consistent With *Reeves*.	6
Conclusion	8

TABLE OF CITED AUTHORITIES

Page

Cases:

Carter v. City of Miami, 870 F.2d 578 (11th Cir. 1989) 4

Isenbergh v. Knight-Ridder Newspaper Sales, Inc., 97 F.3d 436 (11th Cir. 1996), *cert. denied*, 117 S. Ct. 2511 (1997) 6

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000) ..... *passim*

Tidwell v. Carter Products, 135 F.3d 1422 (11th Cir. 1998) 6

Statutes:

28 U.S.C. § 1254(1) 1

29 U.S.C. §§ 621, *et seq.* 1

Florida Civil Rights Act of 1992, §§ 760.01-760.11, Fla. Stat. (1996) 1

Rules:

Sup. Ct. R. 10 ..... 2, 3

Sup. Ct. R. 10(c) 2

STATEMENT OF JURISDICTION

On March 8, 2001, the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") rendered its final judgment below when it denied Jimenez's petitions for rehearing and rehearing *en banc*. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE[1]

Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*

Florida Civil Rights Act of 1992, §§ 760.01-760.11, Fla. Stat. (1996)

CONCISE STATEMENT OF THE CASE

The Authority terminated the employment of Jimenez for repeated instances of poor performance. App. A, pp. 4a-5a, 16a-18a. Jimenez filed suit, asserting a panoply of claims, including claims of age discrimination under the Age Discrimination in Employment Act and the Florida Civil Rights Act of 1992 ("Jimenez's Claims").[2] The district court

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1. Jimenez omits any pertinent statutory provisions and includes, instead, a reference to the Equal Protection Clause of the U.S. Constitution. However, Jimenez never asserted in the proceedings below a claim of age discrimination under the Equal Protection Clause.

2. The remaining claims originally asserted by Jimenez are not at issue, since he has limited his petition to his age discrimination claim. Petition at 1 ("Jimenez respectfully requests that a writ of certiorari be issued to review the judgment . . . as said judgment pertains to Jimenez' age discrimination claim only.")

granted final summary judgment in favor of the Authority with respect to Jimenez's Claims concluding that Jimenez had failed to present sufficient evidence to create a genuine issue of material fact as to whether the Authority's proffered non-discriminatory reasons for discharging Jimenez were pretextual. App. C, pp. 41a-42a.

On appeal, the Eleventh Circuit affirmed the district court's summary judgment. Citing to *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097 (2000) and noting that the record established that Jimenez had been previously warned about his poor performance, the Eleventh Circuit concluded that Jimenez had failed to meet his burden of coming forward with sufficient evidence which would permit the trier of fact to infer that the Authority's proffered reasons were pretextual. App. A, pp. 16a-17a. Jimenez filed a petition for rehearing and rehearing *en banc*, both of which were denied.

ARGUMENT

THE ELEVENTH CIRCUIT'S DECISION BELOW DOES NOT GIVE RISE TO A CONFLICT WITH THIS COURT'S DECISION IN *REEVES*.

This Court grants petitions for writ of certiorari only for "compelling reasons." Sup. Ct. R. 10. Generally, a petition will be granted only when the petitioner demonstrates that the ruling rendered by the court of appeals in question conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c).[3] "A petition for writ of certiorari is rarely granted

3. Supreme Court Rule 10 cites to other bases for granting a petition for writ of certiorari, but those bases are inapplicable under (Cont'd)

when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

In this instance, the gravamen of Jimenez's argument is that the *district court's* decision was in conflict with *Reeves*.[4] He argues that the district court's analysis conflicts with *Reeves* and that the Eleventh Circuit's decision to affirm the district court's ruling is, therefore, necessarily improper. As noted below, not only did the Eleventh Circuit correctly interpret and apply *Reeves*, the district court's decision was consistent with *Reeves* as well. As a result, there is no basis for this Court to exercise its discretionary review powers.

A. The Eleventh Circuit's Decision Below Does Not Conflict With *Reeves*.

In affirming the district court's entry of final summary judgment, the Eleventh Circuit specifically relied upon *Reeves*: "To survive summary judgment, plaintiff must then present evidence to show 'the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.' *Reeves v. Sanderson Plumbing*

(Cont'd)
the facts of this case. Jimenez does not argue that the Eleventh Circuit's decision below conflicts with the decisions of any other Court of Appeals. In fact, Jimenez's entire argument is limited to a purported conflict with *Reeves*. Finally, Jimenez does not advocate that the Eleventh Circuit's decision so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

4. Of course, the district court entered final summary judgment on January 11, 1999, prior to this Court's ruling in *Reeves*.

Prods. Inc., 120 S. Ct. 2097, 2106 (2000)." App. A, p. 14a. The Eleventh Circuit noted that Jimenez had been warned on a number of occasions regarding his poor performance in maintaining the warehouse for which he bore responsibility yet failed to take corrective action. The Eleventh Circuit also noted that the Authority had hired an independent auditor to examine the condition of the warehouse and that the accuracy of the results of the auditor's report were undisputed by Jimenez. App. A, pp. 4a-5a, 16a-17a.

Turning its attention to the question of pretext, the Eleventh Circuit observed that Jimenez's "evidence" of pretext was limited to hearsay and conclusory allegations unsupported by record evidence. *Id.* at 16a-17a. Citing to its own precedent in *Carter v. City of Miami*, 870 F.2d 578, 581 (11th Cir. 1989), the Eleventh Circuit observed that Jimenez could not establish pretext based upon a mere "scintilla of evidence," particularly where the record evidence clearly established a record of poor performance. *Id.* This holding is consistent with this Court's holding in *Reeves*:

> Thus, a plaintiff's prima facie case, *combined* with *sufficient evidence* to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.
>
> This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's

> explanation, no rational factfinder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.

Reeves, 530 U.S. at 148, 120 S. Ct. at 2109 (emphasis supplied in part).

In this instance, the Eleventh Circuit applied *Reeves* and concluded that Jimenez's record of poor work performance, when coupled with nothing more than conclusory allegations to establish pretext, warranted summary judgment in favor of the Authority. Jimenez failed to come forward with "sufficient evidence" to establish pretext. Even if his unsupported conclusory allegations were considered "evidence" of pretext, such evidence raises, at best, a "weak issue of fact" as to the Authority's motivations, particularly in the face of "abundant and uncontroverted independent evidence" of legitimate, nondiscriminatory reasons for Jimenez's termination.

Regardless of the district court's analysis in granting summary judgment, the Eleventh Circuit correctly interpreted and applied *Reeves* to the facts in the record and affirmed the summary judgment. As a result, the decision below does not give rise to a conflict that warrants this Court's discretionary review.

B. Even If The Proper Focus In This Petition Were On The District Court's Analysis, Rather Than On The Eleventh Circuit's, The Petition Should Still Be Denied Because The District Court's Analysis Was Consistent With *Reeves*.

Jimenez's suggestion that the district court's summary judgment analysis was flawed and inconsistent with *Reeves* is simply incorrect. Even though it rendered its decision prior to *Reeves*, the district court correctly articulated the standard by which to judge the suitability of summary judgment in employment discrimination cases. The district court cited to *Tidwell v. Carter Products*, 135 F.3d 1422 (11th Cir. 1998) for the proposition that a plaintiff "must provide a prima facie case *plus* evidence discrediting the employer's reasons to survive a motion for summary judgment." App. C, p. 30a. This ruling is consistent with the pronouncement in *Reeves* that "a plaintiff's prima facie case, *combined* with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves*, 530 U.S. at 148, 120 S. Ct. at 2109 (emphasis supplied).

Jimenez's attempt to discredit the district court's analysis because of its reliance upon *Isenbergh v. Knight-Ridder Newspaper Sales, Inc.*, 97 F.3d 436 (11th Cir. 1996), *cert. denied*, 117 S. Ct. 2511 (1997) is similarly misplaced. The district court cited to *Isenbergh* not for the principle that the plaintiff must come forward with additional evidence of discrimination to avoid summary judgment, but rather for the proposition that the plaintiff must present "significantly probative" evidence of pretext to avoid summary judgment. App. C, p. 28a. This ruling is consistent with the Court's

observation in *Reeves* that a "weak issue of fact" as to pretext does not necessarily entitle a plaintiff to get to the jury. *Reeves*, 530 U.S. at 148, 120 S. Ct. at 2109.

Jimenez's remaining criticisms of the district court's ruling are equally without merit. Jimenez challenges the district court's conclusion that Jimenez was obligated to come forward with evidence that "call[ed] into question the veracity of defendant's ultimate justification itself." The district court's ruling amounts to little more than a paraphrase of the principle in *Reeves* that the plaintiff must come forward with evidence which would allow a jury to find that the employer's proffered justification for its actions was pretextual. If Jimenez's evidence did nothing more that create issues of facts as to certain peripheral issues, but did not challenge the validity of the substantive reasons proffered by the Authority, then that evidence was insufficient to allow Jimenez to survive summary judgment. In similar fashion, the district court's conclusion that Jimenez needed not only to establish a *prima facie* case, but *also* present evidence of pretext is perfectly consistent with *Reeves*. *Reeves*, *supra* ("[A] plaintiff's prima facie case, *combined* with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.")

Even if it were the function of this Court on a petition for writ of certiorari to review the analysis of the district court below, the petition should still be denied because the district court's analysis in this instance was consistent with the subsequent pronouncements of this Court in *Reeves*.

CONCLUSION

Jimenez has failed to articulate a recognized basis for the Court to exercise its discretionary power to review the decision below by writ of certiorari. While Jimenez's petition makes repeated references to alleged conflicts created by the district court's analysis in this case, there is no indication that the Eleventh Circuit's decision or analysis conflicts with a precedent of this Court. Moreover, Jimenez's criticisms of the district court's analysis are unfounded since the district court correctly concluded that Jimenez was required to establish a *prima facie* case of discrimination as well as come forward with evidence that the Authority's proffered reasons for terminating his employment were pretextual. In actuality, the undisputed record evidence regarding Jimenez's poor performance leaves little room for doubt that both the district court and the Eleventh Circuit correctly concluded that summary judgment was appropriate. Under these facts, the Authority would respectfully request that the Court deny Jimenez's petition for writ of certiorari.

Respectfully submitted,

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